

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

JOANNE R. SCHEAFNOCKER,

Plaintiff, CIV-S-05-2002 DFL PAN (GGH) PS

vs.

COMMISSIONER OF INTERNAL  
REVENUE SERVICE,

Defendant. ORDER

On June 21, 2006, the magistrate judge filed findings and recommendations herein which were served on the parties and which contained notice that any objections to the findings and recommendations were to be filed within ten days. Defendant filed objections on June 27, 2006, plaintiff filed objections on June 27, 2006, and they were considered by the district judge.

This court reviews de novo those portions of the proposed findings of fact to which objection has been made. 28 U.S.C. § 636(b)(1); McDonnell Douglas Corp. v. Commodore Business Machines, 656 F.2d 1309, 1313 (9th Cir. 1981), cert. denied, 455 U.S. 920 (1982). As to any portion of the proposed findings of fact to which no objection has been made, the court assumes its correctness and decides the motions on the applicable law. See Orand v. United States, 602 F.2d 207, 208 (9th Cir. 1979). The magistrate judge's conclusions of law are

1 reviewed de novo. See Britt v. Simi Valley Unified School Dist., 708 F.2d 452, 454 (9th Cir.  
2 1983).

3 The court has reviewed the applicable legal standards and, good cause appearing,  
4 concludes that it is appropriate to adopt the Proposed Findings and Recommendations in full.  
5 The court finds that the holding in WWSM Investors v. United States is still the prevailing law in  
6 the Ninth Circuit. Since WWSM Investors was decided, however, all other circuit courts that  
7 have considered the issue have determined that § 7426 is the exclusive remedy for third party  
8 wrongful levy claims. The Ninth Circuit may wish to reconsider its position in the light of this  
9 subsequent authority, but it is not the place of a lower court to engage in such a reconsideration.  
10 If defendant seeks to appeal the court's decision, it may petition the court for certification of an  
11 interlocutory appeal under 28 U.S.C. § 1292(b).

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13 Accordingly, IT IS ORDERED that:

14 1. The Proposed Findings and Recommendations filed June 21, 2006, are  
15 ADOPTED; and

16 2. Defendant's motion to dismiss filed March 29, 2006, is denied. Defendant is  
17 ordered to serve and file an answer to plaintiff's complaint within thirty days of the filed date of  
18 this order.

19 DATED: March 28, 2007

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21 /s/ David F. Levi  
22 UNITED STATES DISTRICT JUDGE  
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